BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

REPLY COMMENTS OF THE COLORADO TELECOMMUNICATIONS ASSOCIATION, OREGON TELECOMMUNICATIONS ASSOCIATION, WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION AND CALIFORNIA SMALL LOCAL EXCHANGE COMPANIES

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SUMMARY

Rural companies face a precarious future. When rural companies face a precarious future, then the customers that are served in these high-cost and hard-to-serve areas also face a precarious telecommunications future.

One of the major problems facing rural companies is the significant and rapidly growing presence of phantom traffic. This traffic, which lacks sufficient information to be billed – hence the name phantom traffic – constitutes from twenty to fifty percent of the traffic reaching rural companies over the common access trunks. The trend shows that the volume of traffic that may qualify as phantom traffic is increasing rapidly. In these Reply Comments, the Rural Associations propose a solution to address the phantom traffic problem. The solution focuses on the tandem switch and the tandem provider as a key control point in the network. The starting point for the solution is the adoption of mandatory standards that require a truth-in-labeling of all traffic. If the traffic is not properly labeled when it reaches the tandem, the tandem provider should be given the authority to block such traffic. If the tandem provider chooses not to block such traffic, then the tandem provider should be financially responsible for the traffic it delivers to the rural companies.

The reason that addressing the phantom traffic problem is important for intercarrier compensation reform is that capturing all traffic that properly should be part of the compensation formula is the first step for determining the "size of the pie." If the denominator of the intercarrier compensation formula is larger because all appropriate traffic is included, then it is easier to reduce access rates as part of an intercarrier compensation solution. Thus, the first step is to get a control over the amount of traffic that is being delivered to rural companies to determine what traffic can and should be considered as access traffic for intercarrier

compensation purposes. Once all traffic is captured, attention can be turned to deciding which intercarrier compensation proposal is the most appropriate.

The Rural Associations argue that it is very important to carefully consider the effect that any intercarrier compensation proposal may have on universal service funding and on customer rates. The balance that must be forged is to find a reasonable level of intercarrier compensation so that universal service funding mechanisms are not unduly burdened and become political liabilities. Perhaps even more importantly, care must be taken in shifting intercarrier compensation recovery from carriers to customers. Some of the proposals that have been made have the potential for transferring sixty dollars or more per month to end use customers, with many companies falling in the twenty to thirty dollar per month range. The task faced by the Commission is not an easy one. However, a reasonable balance among intercarrier compensation, universal service support and rates paid by consumers must be achieved for any intercarrier compensation proposal to be considered rational.

Among other issues that the Commission can address as the means of clearing the stage for intercarrier compensation reform include addressing VNXX issues and intraMTA wireless traffic. In today's circumstances, the VNXX arrangements and the indirect delivery of intraMTA wireless traffic allow the VNXX carriers and wireless carriers to avoid incurring costs, increasing their profits, while imposing costs on rural companies.

The Rural Associations assert the proposition that any bill and keep solution is inappropriate. Intercarrier compensation should reflect cost-based rates. This means that a bill and keep system is not appropriate. In addition, for rural companies, the most appropriate measure of a cost-based rate is the one that exists today: embedded costs. A TELRIC type of approach has not been demonstrated to accurately reflect the way in which investment is made and services provided in rural company service areas. A TELRIC approach would discourage investment and encourage the dismantling of rural networks.

Finally, in these Reply Comments the Rural Associations address three additional items. The first is to identify some of the problems that are created through the use of over reliance on negotiated agreements as a solution to intercarrier compensation. On the second of these three items, the Rural Associations caution that the continued combination of market power, particularly related to Internet backbone, caused by recent mergers is a question that needs careful review. And, not the least important point by any means, the Rural Associations point out that the State Allocation Mechanism proposed by NARUC for universal service fund distributions is inconsistent with Section 254 admonitions that universal service support be predictable and sufficient.

I. INTRODUCTION

The Rural Associations[1] welcome the opportunity to file these Reply Comments. In the opening round, the Rural Associations provided an initial set of comments focusing on the principles for intercarrier compensation reform. In these Reply Comments, the Rural Associations will address some of the issues raised by other parties in the opening round of comments.

II. BACKGROUND: RURAL MEANS RURAL

Almost all of the parties submitting comments in this docket have recognized that when it comes to intercarrier compensation, rural companies[2] require treatment under a standard that is different from the standard for the non-rural companies.[3] There is good reason for this approach. The rural companies serve markets which have low customer density and high per customer costs.

The Rural Task Force described the implications of the different market characteristics faced by rural companies as follows:

> Most Rural Carriers serve primarily residential and very small business customers. Rarely are there large business customers present in rural areas. In instances where a large business customer is present, the single customer can account for a disproportionate share of the Rural Carrier's business.[4]

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[1] In the Opening Comments, the Rural Associations consisted of the Colorado Telecommunications Association, Oregon Telecommunications Association and Washington Independent Telephone Association. For purposes of these Reply Comments, those three associations are joined by a group of rural incumbent local exchange carriers operating in California who filed opening comments in this docket under the name "California Small LECs." A list of participating companies is set out in Appendix 1.

[2] Technically, the defined term is "rural telephone company." See, 47 U.S.C. §153(37). For ease of reference in these Reply Comments, the term "rural companies" is used.

[3] See, generally, Initial Comments of the South Dakota Public Utilities Commission and Initial Comments of the National Association of Regulatory Commissioners. See, also, Comments of the National Telecommunications Cooperative Association (NTCA Comments) beginning at p. 11 and Initial Comments of Minnesota Independent Coalition at p. 3-4.

[4] Rural Task Force, The Rural Difference, White Paper 2, January 2000 at p. 30.

The National Exchange Carrier Association (NECA) pointed out that the average rural company serves areas with only about 10.5 lines per square mile. Larger, non-rural carriers, in contrast, average 134 lines per square mile, and often serve thousands of customers per square mile.[5] For the companies that are part of the Rural Associations, in many cases the service areas are even less dense than 10.5 lines per square mile cited in the NECA Comments. What this means in terms of a plan to address intercarrier compensation, as pointed out by the National Telecommunications Cooperative Association (NTCA), is that: "a 'one size' solution that may work for large urban carriers cannot possibly meet the diverse needs and variable cost structures of rural carriers. In promoting efficiency and competition, the Commission must take care to avoid gross generalizations and assumptions based on large carrier operations in highly-populated areas."[6]

The fact that rural companies serve substantially different markets, as a whole, than non-rural companies, results in the need to treat the rural companies differently than the non-rural companies. This concept should have a bearing on the ultimate outcome of intercarrier compensation reform as it applies to rural companies.

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[5] Comments of the National Exchange Carrier Association, Inc. (NECA Comments) at p. 12.
[6] NTCA Comments at p. 15.

III. THE GOALS OF INTERCARRIER COMPENSATION REFORM

Many of the parties commenting in the opening round included a discussion of the goals or principles for intercarrier compensation reform.[7] Indeed, the FCC itself began its discussion of the issues of intercarrier compensation reform by identifying two primary goals for intercarrier compensation reform. The first of these goals is that "Any new approach should encourage the efficient use of, and investment in, telecommunications networks, and the development of efficient competition."[8] A second goal identified by the Commission is the preservation of universal service. On this score, the Commission noted that it is particularly sensitive to the interests of rural and high-cost communities.[9] Implicit in these first two goals is that the new intercarrier compensation regime should produce a benefit to customers. Therefore, the Rural Associations believe that an explicitly stated goal of intercarrier compensation reform should be to minimize adverse impacts on customers.

To summarize these three goals:

- Encourage efficient use of and investment in telecommunications networks
- Promote universal service
- Minimize adverse customer impacts

The opening comments of a diverse group of interested parties demonstrate that the answer to how to meet these goals is different in rural company service areas than in non-rural company service areas.

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[7] See, e.g., Initial Comments of the National Association of Regulatory Utility Commissioners (NARUC Comments).

[8] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 (Released March 3, 2005) (FNPRM) at ¶31.

[9] FNPRM at ¶32. The Commission also identified the need that any new intercarrier compensation regime be technologically neutral. FNPRM at ¶33. This appears to be a structural goal for a new intercarrier compensation regime, as opposed to an outcome goal.

It should be noted that out of apparent concern over what may happen to consumers as a result of intercarrier compensation reform, several consumer groups and state commissions expressed concern about any rapid actions on the part of the Commission. These groups counseled a cautious, thorough exploration of the issues before taking action. For example, the National Association of State Utility Consumer Advocates (NASUCA) cautioned that radical changes to current compensation regimes are not advisable.[10] The Joint Comments of the Texas Office of Public Utility Council, Consumer Federation of America and Consumers Union (Consumer Advocates) pointed out that additional increases in subscriber line charges (SLC) is inconsistent with universal service. The Consumer Advocates cautioned the Commission to use a go slow approach.[11] Following this same thread, the Alaska Commission stressed the importance of the need to quantify each of the proposals so that the presumable effect of each of the proposals on consumers is reasonably well known before any proposal is adopted.[12] Because of low customer densities and lack of economies of scale, the fact is that in rural company service areas, customers are more likely to be adversely affected by intercarrier compensation reform than customers in non-rural company service areas. If there is a need to "go slow," it is especially important in rural company service areas.[13]

This does not mean that the Commission should close this docket. There are a number of steps that the Commission can and should take in the short term to address intercarrier compensation reform. One of these is to address phantom traffic, which will be discussed in the next section. Another is to address virtual NXX arrangements. A third is to address the

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[10] Initial Comments of the National Association of State Utility Consumer Advocates (NASUCA Comments) at p. 2.
[11] Comments of the Texas Office of Public Utility Council, Consumer Federation of America and Consumers Union (Consumer Advocate Comments) at p. 3 and 4.
[12] Comments of the Regulatory Commission of Alaska at p. 8.
[13] This point is expressly or implicitly recognized in many comments -- suggesting longer transition periods or other "go slow" approaches. See, generally, Comments of the Regulatory Commission of Alaska. See, e.g., Comments of Western Wireless Corporation and Suncom Wireless, Inc. (Western Wireless Comments) at p. 26.

transport rules for intercarrier interconnection. A fourth, and very obvious step, is to start the process of actually pricing out the intercarrier compensation proposals and what they mean in terms of additional costs to consumers and additional burdens on universal service funds.

IV. THE COMMISSION SHOULD IMMEDIATELY ADDRESS THE PROBLEM OF PHANTOM TRAFFIC

A significant volume of telecommunications traffic is being delivered to rural companies for termination without sufficient information to permit billing by the rural companies. This traffic originates from interexchange carriers (IXCs), competitive local exchange carriers (CLECs), wireless providers and others (collectively, "the originating providers"). The rural companies are not being paid for terminating this traffic. As a corollary, the originating providers are receiving free use of the rural companies' networks. In addition, it appears that significant amounts of toll or long-distance traffic is being delivered to the rural companies over extended area service (EAS) trunks without records necessary for assessing access charges. This traffic – traffic delivered without associated records identifying the originating carrier, or interexchange carrier in the case of toll traffic – is referred to as "Phantom Traffic."

National estimates have put the size of the problem at twenty percent or more of the traffic terminating to a rural carrier.[14] In Oregon, one company that has established the capability to capture terminating traffic has reported that upwards of fifty percent of the traffic terminating to it on Feature Group C (FGC) trunks[15] potentially qualifies as Phantom Traffic. The same company reported that on Feature Group D (FGD) trunks, the Phantom Traffic rate is far below one percent. Two Washington companies with similar measuring capability have reported that in excess of forty percent of the traffic received by one company and in excess of fifty percent of the traffic received by the other company, terminating to the companies on FGC

[14] National Exchange Carrier Association, Inc., "Phantom Traffic" Uncover, Discover and Recover, Presented March 3, 2005. Balhoff & Rowe, LLC, Phantom Traffic: Problem and Solutions, (May, 2005).

[15] In common usage, the trunk groups between rural companies and the RBOC tandem for the carriage of toll traffic, at least in Qwest's RBOC region, are referred to as Feature Group C trunks. Technically, the trunk groups were established as Feature Group trunks for the provision of Feature Group services (Feature Group A, Feature Group B, and Feature Group C) ordered out of the rural company's access tariff.

trunks do not have associated billing records and, thus, may qualify as Phantom Traffic.

Set out below as Chart 1 and Chart 2 are the trending results for the past several years in the growth of phantom traffic delivered to the two Washington companies mentioned above. What these charts demonstrate is that the problem of Phantom Traffic is a growing problem and is substantial. Not only is it possible that large amounts of access traffic are escaping responsibility for payment for use of the rural company networks, the rural companies are also experiencing significant increased costs for enhancing the trunk groups. These expenses are borne by the rural customers instead of by the carriers that are enjoying the free use of the rural companies' networks. In addition, to the extent this traffic appears as "local" traffic, the originating carrier may be avoiding making its full contribution to the universal service fund.

CHART 1
COMPANY A
FGC TERMINATING TRAFFIC

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,587,726	1,682,758	4,080,112	1,077,742	1,507,614	605,016	26.9800%	35.9500%
2002	5,877,825	1,759,500	3,956,574	1,021,705	1,921,251	737,795	32.6900%	41.9300%
2003	6,604,722	2,085,805	3,795,144	1,039,990	2,809,578	1,045,815	42.5400%	50.1400%
2004	7,760,104	2,391,229	4,059,805	1,106,798	3,700,299	1,284,431	47.6800%	53.7100%
2005*	3,052,349	877,217	1,481,564	376,674	1,570,785	500,543	51.4600%	57.0600%

*Through April, 2005

CHART 2
COMPANY B
FGC TERMINATING TRAFFIC

A	B		C		D		E	
	SWITCH MEASURED		QWEST REPORTED		DIFFERENCE		DIFFERENCE %	
YEAR	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG	MINUTES	MSSG
2001	5,718,675	1,657,584	4,713,652	1,289,940	1,005,023	367,644	17.57%	22.18%
2002	5,593,718	1,606,657	4,279,885	1,194,976	1,313,833	411,681	23.49%	25.62%
2003	7,012,272	1,852,954	4,725,073	1,300,679	2,287,199	552,275	32.62%	29.81%
2004	9,088,319	2,451,576	5,428,731	1,485,853	3,659,588	965,723	40.27%	39.39%
2005*	2,950,018	826,458	1,749,758	488,548	1,200,260	337,910	40.69%	40.89%

*Through March, 2005

These charts underscore that Phantom Traffic is a problem that must be addressed now. For Company A, Chart 1, Column E, shows a growth in potential Phantom Traffic from 27 percent of the minutes in 2001 to 51 percent of the minutes in 2005. For Company B, the trend depicted on Chart 2, Column E, is a growth from under 18 percent of the minutes in 2001 to almost 41 percent in 2005.

Many of the parties commenting in the opening round addressed Phantom Traffic as an issue needing immediate attention. For example, NECA points out: "'phantom traffic' problems must be eliminated … if any intercarrier compensation system is to survive long term. A sizable portion of traffic now terminating on ILEC switches is being delivered in a form in which the billing information is absent, lost, stripped or altered."[16] The Iowa Telecommunications Association points out that problems of Phantom Traffic are causing significant market

[16] NECA Comments at p. 16.

distortions.[17] CenturyTel identifies Phantom Traffic as "one of the fastest growing problems facing the industry."[18] CenturyTel points out:

> [Phantom traffic] increases the ILECs' cost, as they are forced to invest in additional facilities to avoid network congestion affecting their legitimate customers. They incur expenses, too, in trying to determine source of this traffic so they can impose appropriate termination charges.[19]

TDS also takes the position that the Commission should address phantom traffic issues immediately.[20] TDS points out:

> The growing problem of phantom traffic distorts the intercarrier compensation system by placing undue burdens and costs on other carriers and consumers (especially rural consumers); undermines the cost-causer principle at the heart of the current intercarrier compensation system; and contributes to regulatory arbitrage.[21]

The good news is that Phantom Traffic is a problem that has a solution. Phantom Traffic is an issue that the Commission can and must address immediately.

The solution is straightforward. The issue has been addressed by the EPG Plan.[22] It is a solution advocated by CenturyTel and TDS.[23] It is a solution that is supported, at least in many aspects, by NASUCA.[24] It is a solution that even has support, at least in part, from NARUC.[25]

The solution is straightforward and consists of four parts:

1. The Commission should adopt "truth-in-billing" standards that make it explicitly unlawful to alter, exclude, or strip carrier or call identifying information and that require population of jurisdictional information in the signaling stream.[26]

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[17] Comments of the Iowa Telecommunications Association at p. 3.
[18] Comments of CenturyTel, Inc. (CenturyTel Comments) at p. 5.
[19] CenturyTel Comments at p. 5.
[20] Comments of TDS Telecommunications Corporation (TDS Comments) at p. 9.
[21] TDS Comments at p. 10.
[22] See, The Expanded Portland Group, A Comprehensive Plan for Intercarrier Compensation Reform, CC Docket No. 01-92, beginning at p. 5 (November 2, 2004) (EPG Plan).
[23] CenturyTel Comments at p. 7; TDS Comments at p. 11.
[24] See, NASUCA Comments at p. 10.
[25] Notice of Written Ex Parte Presentation dated May 18, 2005, Revised NARUC Task Force Proposed Version 7 at p. 6-7.
[26] NTCA provides guidance on what type of standard might be adopted for requiring population of the jurisdictional information by recommending that the currently optional parameters of the Network Interconnection Interoptability Forum for the Jurisdictional Information Parameter (JIP) be adopted as mandatory standards. See, NTCA Comments at p. 51.

2. The Commission should implement processes for challenging suspect traffic and penalizing responsible carriers.

3. The Commission should adopt a standard that the carrier delivering inaccurately labeled traffic is responsible for termination charges for that traffic.

4. The Commission should authorize the blocking of inaccurately labeled traffic, particularly by the tandem provider, subject to specific guidelines and timelines for notifying and warning consumers and investigating and resolving disputes.

The most effective means of controlling and solving this problem is to focus at the tandem switch. The tandem is a bottleneck facility and the tandem provider wields significant market power.[27] Most access/toll tandems are operated by RBOCs which have the economic wherewithal to address this problem if properly motivated. Requiring the transiting provider to be responsible for the payment of terminating charges if the message is not properly populated will provide an economic incentive to those tandem providers. Then, authorizing the tandem provider (and, where it is feasible, the end office provider)[28] to block improperly labeled traffic will give the tandem provider a powerful tool to bring the Phantom Traffic problem to an end.

[27] See, NTCA Comments at p. 54.
[28] If the traffic arrives on a common trunk group it may be difficult for the end office switch to block traffic without also blocking traffic with properly populated records.

V. THE COMMISSION SHOULD REJECT ALL BILL AND KEEP PROPOSALS

Many of the commenters in the opening round have pointed out over and over again why bill and keep is inappropriate and, probably, illegal. Perhaps the most telling of these arguments is that offered by a former proponent of bill and keep, BellSouth Corporation. In its comments, BellSouth points out that bill and keep does not promote economic efficiency or preserve universal service, nor is it competitively neutral.[29] Initially Bell South advocated bill and keep and was an active participant in the ICF. Bell South changed its position and offered this explanation:

> However, as BellSouth analyzed the serviceability of a bill-and-keep mechanism, it became apparent that an underlying presumption of bill-and-keep is that the marketplace equilibrium is based upon fully functional facilities-based network providers exchanging traffic. If all carriers had facilities-based networks, there would be no need for the intercarrier compensation system to provide economic incentives for carriers to interconnect efficiently, as their own economic self-interest would be sufficient motivation.[30]

BellSouth points out that the market does not consist of only facilities-based carriers. Therefore, the underlying assumption for bill and keep is erroneous. BellSouth goes on to point out that bill and keep would result in distortion of economic entry by denying the local carrier the opportunity to recover the cost of enabling the interexchange call. Thus, bill and keep would provide disincentives for entry into the local telecommunications market or expansion of local networks.[31]

Many of the state commissions and consumer advocates urge the Commission not to move to a bill and keep environment. The Wyoming Office of Consumer Advocate points out that bill and keep does not promote economically efficient use of investment or efficient

[29] BellSouth Corporation Comments (BellSouth Comments) at p. 9.
[30] BellSouth Comments at p. 5.
[31] BellSouth Comments at p. 10.

competition.[32] The North Dakota Public Service Commission urges this Commission to reject bill and keep as a viable option.[33] The South Dakota Public Utilities Commission points out that bill and keep would provide significant harm to rural LECs.[34]

The Indiana Commission argues that bill and keep is fundamentally flawed for the following reasons:[35]

- Bill and keep fails to account for cost causation and sends improper market signals
- Bill and keep is not competitively neutral
- Bill and keep requires regulatory intervention for its very existence
- Bill and keep does not support the goals of universal service

The Indiana Commission points out that a bill and keep approach discourages investment in telecommunications infrastructure:

> Even assuming arguendo that the incremental cost of origination and termination is at or close to zero, it is not at all clear that originating and terminating intercarrier prices should also be zero. Telecommunications is a very capital-intensive industry that often requires large network investments. Relying solely upon an incremental cost standard to set prices could result in misallocation of those network costs, under-recovery, or both. This is especially true if incremental costs are zero [as bill and keep proponents assert]. Those costs should be recovered from both retail and wholesale customers, not just from retail customers.[36]

Consumer advocates have weighed in against adoption of a mandatory bill and keep system. In NASUCA's Comments, they point out that a carrier that originates, transits or terminates traffic on the network of another carrier imposes costs on that carrier. As NASUCA states "As a result, the cost of carrier interconnection and carriage cannot be zero, and likewise

[32] Initial Comments of Wyoming Office of Consumer Advocate at p. 9.
[33] Comments of North Dakota Public Service Commission at p. 2.
[34] Initial Comments of the South Dakota Public Utilities Commission at p. 5.
[35] Initial Comments of the Indiana Utility Regulatory Commission on the Further Notice of Proposed Rulemaking on Intercarrier Compensation.
[36] Ibid. at p. 5.

the intercarrier compensation rate cannot be zero."[37] NASUCA points out that a calling party pay system stimulates subscription and usage and is considered the most fair and equitable system by customers.[38] NASUCA argues that the notion of dividing the benefit of a call between the calling and called party, in part on the concept that the called party can control some of the use of the network through caller ID, is a misplaced assumption. As stated by NASUCA:

> This notion of assigning or dividing the benefit of a call actually misses the point. Almost without exception, it is the calling party -- and the calling party's network -- that **causes** the call. The called party may benefit from the call -- as in the case of the notification of a family event -- or may not benefit -- as in the case of an annoying telemarketing call. This cannot obscure the fact that the calling party first picked up the telephone and dialed the called party's number. (Emphasis in original.)[39]

To repeat the concept: This cannot obscure the fact that the calling party first picked up the telephone and dialed the called party's number. NASUCA's observation is straightforward and completely accurate. The notion of shifting cost to the called party through a mandatory bill and keep system is not appropriate.

These thoughts are echoed by the Consumer Advocates. In their comments, the Consumer Advocates state:

> Notwithstanding, the calling party has benefited by having as broad a calling network as possible. This is one of the underpinnings of universal service. Shifting some or all of the cost responsibility for a call to the called party could result in diminishing that network.
>
> These changes in network design and function and human behavior made possible by technological process [caller ID, etc.] do not mean that we should abandon our user pays/cost causer principle, but that we need to think carefully about how the network is used and the costs caused. The calling party still bears primary responsibility for the call.[40]

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[37] NASUCA Comments at p. 4.
[38] NASUCA Comments at p. 26, citing to the Affidavit of Dr. David Gabel attached to the NASUCA Comments as Attachment 4.
[39] NASUCA Comments at p. 26.
[40] Consumer Advocate Comments at p. 8.

In short, what the consumer groups are saying is that bill and keep is inconsistent with cost causation principles and, ultimately, provides disincentive for investment in networks.

The point that bill and keep discourages investment is summarized very well by TDS:

> The Commission has recognized that all telecommunication users nationwide benefit when carriers can use the networks of other carriers, including rural and competitive carriers, to originate and terminate telecommunications services. It is fundamental to maintaining a robust, ubiquitous, nationwide telecommunications infrastructure for network operators to recover from other carriers charges that reflect a rational measure of the costs incurred when the network is used for calls initiated by the other carriers' customers. Indeed, economic efficiency, one of the primary goals of intercarrier compensation reform, requires that intercarrier prices be set to reflect accurately the costs incurred by carriers in making their networks available to other carriers. In short, all users of a network must pay for that use to ensure that all participants (both suppliers and consumers) in the market for network services are motivated by appropriate economic incentives.[41]

Although these Reply Comments will not go into the legal analysis in any depth, it is important to keep in mind that many parties pointed out the questionable legal standing of a mandatory bill and keep system either as constituting confiscation[42] or as a violation of the statutory additional cost standard.[43]

[41] TDS Comments at p. 16-17. See, also, Initial Comments of TCA, Inc. at p. 7.
[42] Comments of GVNW Consulting, Inc. at p. 24.
[43] See, e.g., Comments of Pac-West Telecomm, et al. at p. 9-14.

VI. ANY NEW INTERCARRIER COMPENSATION REGIME MUST NOT OVERLY BURDEN UNIVERSAL SERVICE SUPPORT MECHANISMS

The Commission recognized that any new intercarrier compensation regime must continue to advance the goals of universal service. As stated in 47 U.S.C. §254(b) those goals are as follows:

> (1) QUALITY AND RATES – Quality services should be available at just, reasonable, and affordable rates.
>
> (2) ACCESS TO ADVANCED SERVICES – Access to advanced telecommunication and information services should be provided in all regions of the Nation.
>
> (3) ACCESS IN RURAL AND HIGH COST AREAS – Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunication and information services, that are reasonably comparable to those rates provided in urban areas and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas.

These goals have been well served by the current universal service support mechanisms. However, the level of assessment to support these goals and the universal service support mechanisms is coming under increasing pressure. CenturyTel points out that bill and keep, even under the ICF Plan which has some residual terminating charges for rural carriers, could shift as much as nine billion dollars per year to end users and universal service support mechanisms.[44] The potential effects of such a shift of cost recovery to universal service funding could spell the end of universal service support mechanisms as a politically acceptable means of advancing universal service. The Commission must be very careful to calculate the effect the various plans may have on universal service support mechanisms and end users.

As NTCA observed "At the end of the day, the Commission must gauge the success of its reform by the extent to which it preserves universal service. Rural carriers will remain

[44] CenturyTel Comments at p. 9 and 12.

financially viable and continue to serve rural and high-cost areas only if each rural carrier is able to recover its costs for delivering a full range of comparable telecommunications services at a cost to consumers comparable to what is available in urban areas."[45] The standard identified by NTCA should be applied in measuring each of the intercarrier compensation reform proposals before the Commission.

[45] NTCA Comments at p. 16 (emphasis in the original).

VII. ANY NEW INTERCARRIER COMPENSATION REGIME SHOULD NOT OVERLY BURDEN CUSTOMERS

Some advocates of a bill and keep system argue that all of the cost shift should be placed on end users in the form of unlimited SLCs or other increases in end user rates.[46] CenturyTel points out that the ICF Plan would shift as much as six billion dollars to end users.[47]

NECA has undertaken an effort to try to determine the possible size of the cost recovery shift under the various intercarrier compensation reform proposals. NECA analyzed the Rural Alliance proposal, NARUC (draft v.5), ICF and pure bill and keep. Looking only at interstate access rates, NECA estimated the size of the various shifts of $5.97 per line for the Rural Alliance proposal to $15.42 per line for the pure bill and keep proposal. This is the amount that would need to be recovered through a combination of end user charges and USF support mechanisms. The NECA chart is set forth below.

[46] Comments of CTIA – The Wireless Association ™ at p. 17. A cynical observer might comment that the motivating factor for such a recommendation is to allow wireless companies to increase market share.
[47] CenturyTel Comments at p. 12.

CHART 3
IMPACTS OF LOSS OF INTERCARRIER COMPENSATION REVENUES UNDER ALTERNATIVE ICC APPROACHES BY LINE SIZE GROUP

Alternative	<500	501-1000	1001-2500	2501-5000	5001-10,000	10,001-20,000	20,001-50,000	>50,000	TOTAL/ AVERAGE
Line %	0.2%	0.9%	4.4%	6.4%	11.5%	14.3%	15.3%	47.0%	100.0%
No. of Study Areas	101	152	328	216	203	128	64	49	1241
RURAL ALLIANCE Total Residual	$1.1	$7.0	$42.3	$81.6	$135.0	$146.8	$133.5	$344.6	$891.9
Monthly Per Line Residual	$3.03	$5.11	$6.47	$8.60	$7.85	$6.89	$5.83	$4.90	$5.97
NARUC (Draft V.5) Total Residual	$12.1	$34.8	$138.9	$151.3	$249.8	$255.5	$211.5	$677.3	$1,731.2
Monthly Per Line Residual	$34.46	$25.31	$21.23	$15.94	$14.53	$12.00	$9.24	$9.64	$11.59
ICF Total Residual	$13.9	$37.7	$152.6	$170.4	$279.7	$286.2	$235.3	$717.2	$1,892.9
Monthly Per Line Residual	$39.59	$27.42	$23.31	$17.96	$16.26	$13.44	$10.28	$10.21	$12.67
BILL & KEEP Total Residual	$15.6	$42.2	$174.1	$201.3	$334.6	$350.1	$299.0	$886.7	$2,303.6
Monthly Per Line Residual	$44.51	$30.66	$26.60	$21.21	$19.45	$16.44	$13.07	$12.62	$15.42

It is important to remember that this chart represents the estimated cost shift at **only the interstate level**. The amounts per line grow significantly if **intrastate** access rates are unified (reduced) to the same level as the interstate rates proposed in the various intercarrier compensation plans. Set forth below are charts which estimate the **additional intrastate** per line shifts which occur if intrastate access rates are reduced to the level suggested in the identified plans. These charts were prepared based on actual 2004 intrastate access revenue and actual 2004 intrastate access minute data. A chart is set forth for the rural companies of each of the state associations or groups of companies participating in these Reply Comments.[48]

CHART 4
CALIFORNIA COMPANIES

Company	ICF Plan Shift Per Line Per Month	NARUC ALT. 1[49] Shift Per Line Per Month	NARUC ALT. 2[49] Shift Per Line Per Month	NASUCA Shift Per Line Per Month	B&K Shift Per Line Per Month
1	$36.50	$37.81	$37.05	$32.90	$39.26
2	24.59	25.83	25.34	22.23	27.21
3	19.83	21.22	20.58	17.18	22.76
4	18.92	19.69	19.33	16.79	21.19
5	18.18	19.61	19.17	16.09	20.71
6	17.97	19.27	18.65	15.02	20.55
7	15.41	16.50	16.13	13.80	17.82
8	15.16	16.42	16.08	13.40	17.72
9	13.35	14.52	14.09	12.60	15.81
10	12.96	13.96	13.88	11.34	15.06
11	12.70	13.69	13.39	11.27	14.80
12	7.52	7.85	7.75	7.06	8.21
13	6.19	7.12	6.73	4.30	8.16

[48] Not every company is represented. There were a few companies that did not have sufficiently reliable data available to them at the time these Reply Comments were prepared to be included in calculating the estimated shifts in cost recovery.

[49] These columns were prepared on the assumption that the companies fell within the bracket of greater than 500 access lines but less than 5,000 access lines. There are a few companies that exceed the 5,000 line threshold that would have even greater shifts in the amounts per line per month. There are a small handful of companies that are under 500 access lines that would, thus, result in a lower shift per line. The amounts above are illustrative for the estimating process.

CHART 5
COLORADO COMPANIES

Company	ICF Plan Shift Per Line Per Month	NARUC ALT. 1[50] Shift Per Line Per Month	NARUC ALT. 2[50] Shift Per Line Per Month	NASUCA Shift Per Line Per Month	B&K Shift Per Line Per Month
1	$23.11	$23.73	$23.43	$21.65	$24.43
2	16.97	17.29	17.12	16.17	17.65
3	15.08	15.42	15.18	13.91	15.80
4	13.59	13.98	13.83	12.88	14.42
5	12.80	13.15	13.02	12.22	13.54
6	12.38	12.61	12.49	11.81	12.95
7	11.98	12.44	12.23	11.34	12.87
8	11.98	12.31	12.13	11.12	12.68
9	11.85	12.12	12.01	10.99	12.42
10	10.91	11.32	11.13	10.03	11.76
11	9.78	10.62	10.19	7.76	11.55
12	7.07	7.33	7.19	6.41	7.62
13	6.26	6.46	6.35	5.74	6.68
14	6.00	6.28	6.13	5.31	6.59
15	4.95	5.15	5.05	4.43	5.38
16	4.44	4.71	4.67	4.21	5.02

[50] These columns were prepared on the assumption that the companies fell within the bracket of greater than 500 access lines but less than 5,000 access lines. There are a few companies that exceed the 5,000 line threshold that would have even greater shifts in the amounts per line per month. There are a small handful of companies that are under 500 access lines that would, thus, result in a lower shift per line. The amounts above are illustrative for the estimating process.

CHART 6
OREGON COMPANIES

Company	ICF Plan Shift Per Line Per Month	NARUC ALT. 1[51] Shift Per Line Per Month	NARUC ALT. 2[51] Shift Per Line Per Month	NASUCA Shift Per Line Per Month	B&K Shift Per Line Per Month
1	$15.65	$16.28	$15.92	$13.91	$16.99
2	13.03	13.53	13.22	11.55	14.08
3	12.58	13.14	12.86	11.26	13.77
4	12.37	12.81	12.51	10.93	13.31
5	11.66	12.44	12.26	10.77	13.31
6	10.80	11.31	11.08	9.70	11.89
7	10.79	11.27	11.03	9.65	11.80
8	8.38	8.79	8.62	7.55	9.26
9	8.06	8.49	8.32	7.30	8.96
10	7.79	8.15	7.98	7.06	8.55
11	7.66	8.04	7.91	6.99	8.46
12	7.18	7.38	7.19	6.26	7.60
13	6.36	6.55	6.42	5.62	6.89
14	6.28	6.54	6.39	5.58	6.82
15	6.24	6.54	6.38	5.56	6.75
16	5.79	6.04	5.90	5.16	6.31
17	5.63	5.89	5.77	5.05	6.18
18	5.14	5.33	5.29	4.95	5.54
19	5.05	5.23	5.10	4.45	5.43
20	4.91	5.16	5.05	4.43	5.42
21	4.89	5.12	5.01	4.38	5.37
22	4.76	5.04	4.96	4.35	5.36
23	3.93	4.05	3.95	3.45	4.19
24	3.66	3.78	3.69	3.22	3.92
25	3.52	3.64	3.55	3.10	3.78
26	2.69	2.77	2.71	2.36	2.88
27	2.61	2.74	2.68	2.35	2.87

[51] See footnote 47.

CHART 7
WASHINGTON COMPANIES

Company	ICF Plan Shift Per Line Per Month	NARUC ALT. 1[52] Shift Per Line Per Month	NARUC ALT. 2[52] Shift Per Line Per Month	NASUCA Shift Per Line Per Month	B&K Shift Per Line Per Month
1	$60.16	$61.07	$60.86	$59.16	$62.09
2	40.44	41.11	40.79	38.96	41.84
3	35.09	35.64	35.42	34.03	36.26
4	30.41	30.78	30.36	28.40	31.19
5	27.65	27.82	27.70	27.06	28.02
6	26.43	26.89	26.48	25.24	27.39
7	26.20	26.58	26.38	24.50	27.00
8	23.23	23.87	23.41	22.59	26.74
9	21.29	23.55	22.66	19.26	23.91
10	20.23	20.53	20.33	15.81	20.87
11	16.50	16.87	16.72	15.56	17.28
12	16.15	16.36	16.24	15.52	16.60
13	14.10	14.39	14.22	13.29	14.71
14	13.22	13.66	13.53	12.58	14.15
15	11.16	11.37	11.23	10.50	11.60
16	9.00	9.27	9.14	8.38	9.57
17	8.25	8.83	8.74	7.79	9.49

Even alone, the numbers set forth in these charts are astounding. When these intrastate amounts are added to the interstate amounts set forth in the NECA estimate in Chart 3, the numbers become unfathomable for the customers of the rural companies in some cases and merely unbearable for others.

These numbers suggest the need to carefully consider the financial effects of each of the proposed plans. This is why several parties have urged long transitions.[53] This is also why some parties have suggested that there should be limits to the amount of transition out of access that takes place. For example, CenturyTel advocates no more than a fifty percent reduction in access

[52] See footnote 47.
[53] See, e.g., Western Wireless Comments at p. 26 (six year transition for rural carriers); Comments of Qwest Communications International Inc. on Further Notice of Proposed Rulemaking at p. 18 (three year transition).

rates and no more than $1.50 increase in end user customer charges through the form of a SLC or otherwise.[54]

[54] CenturyTel Comments beginning at p. 28.

VIII. TELRIC IS NOT APPROPRIATE FOR RURAL COMPANIES

Several of the parties that advocate retaining an intercarrier compensation system that includes a form of access charges support use of a TELRIC methodology.[55] However, moving to TELRIC for rural companies will discourage investment in network infrastructure. Moving to a TELRIC approach will increase the transactional costs of the rural companies and, ultimately, their customers, through the cost of implementation of such a system. Moving to a TELRIC standard would put in place a methodology that does not produce reliable outcomes.

In its comments, GVNW quotes an apt description of TELRIC from Messrs. Huber, Kellogg and Thorne, who describe TELRIC as "A pricing model designed to mimic the forward-looking costs of an ideally efficient provider without any of the risk of actually investing in facilities."[56] This is the problem at the core of TELRIC as applied to rural companies: It does not reflect the fact that actual investment has been made in areas that are inherently risky.

The Commission itself has noted that use of the TELRIC standard has created some problems.[57] The United States Telecom Association (USTA) picks up on this comment and makes an excellent point:

> TELRIC has created many problems and, it would provide a particularly bad foundation for a uniform intercarrier compensation structure. TELRIC discourages network investment. It also depends on administrative cost calculations that are difficult, costly, and time-consuming, which imposes considerable regulatory costs that ultimately are borne by consumers. Moreover, small and mid-size companies seldom have sufficient staff and budget to bear these costs.[58]

As the Rural Alliance explains, the use of embedded costs, plus an allocation of joint and

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[55] See, e.g., Comments of Time Warner Telecom, Conversant Communications Inc., Cbeyond Communications LLC, and Lightship Telecom at p. 6; Comments of CTIA – The Wireless Association™ (CTIA Comments) at p. 6; and Comments of Pac-West Telecomm Inc., et al. at p. 6 and 21.
[56] GVNW Comments at p. 30.
[57] FNPRM at ¶66.
[58] Comments of the United States Telecom Association on the Further Notice of Proposed Rulemaking (USTA Comments) at p. 23.

common costs, is the best methodology to determine rural company rates for origination, transport, and termination of intercarrier traffic. Embedded costs are those that are historically incurred by the rural company that are recorded on the company's accounting records. It is an embedded cost system that provides maximum economic efficiency for rural company access charges because it reflects the quantifiable costs of the established network constructed in the inherently high risk rural areas. It is the mechanism that sends the appropriate economic signals regarding the actual costs of originating and terminating telecommunications traffic in those rural areas.[59] Embedded costs have these inherent advantages over TELRIC, which, as stated above, is a theoretical exercise that does not incur the risk of actual investment.

In their comments, rural companies in the State of Minnesota identified that TELRIC is not appropriate. In their comments they point out:

> Developing an appropriate forward-looking cost model, selecting appropriate inputs in the context of rapidly changing technology, and running and maintaining the cost model would be prohibitively expensive and lead to significant delays. Further, application of such a model would present a significant risk that the revenues needed to foster investment in rural telecommunications would not be provided. In addition, implementation of a TELRIC cost study for all ROR ILECs would very likely lead to ongoing regulatory and legal disputes regarding appropriate inputs and the traffic sensitivity of various costs. The resulting delay makes the development of separate TELRIC rates for the over 1,000 ROR ILECs totally impractical.[60]

The thought of preparing 1,000 new TELRIC studies each year may be an economist's view of Nirvana. It is not, however, a realistic solution.

As pointed out by NTCA, if individual TELRIC studies are not practical because of the cost and time associated in developing them, a model is not appropriate either: "Forward-looking cost models are, by definition, not designed to be 100% accurate. Errors in cost model

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[59] Comments of The Rural Alliance at p. 12-20. See, also, The Economic Cost of Mandatory Bill and Keep by Dale Lehman, Appendix B to the Comments of The Rural Alliance.
[60] Initial Comments of the Minnesota Independent Coalition at p. 19.

methodology do not 'average out' when applied to small companies. As a result, support levels are likely to be too low for some carriers and too high for others."[61]

For all of these reasons, use of a TELRIC standard for rural companies is not appropriate.

[61] NTCA Comments at p. 27. NTCA also points to a detailed examination of TELRIC in a White Paper prepared by Dale Lehman entitled "The Role of Embedded Cost in Universal Service Funding."

IX. INTERCONNECTION ISSUES

1. The Use of VNXX Should not be Allowed to Impose Additional Costs on Rural Companies.

In the course of the opening comments, several parties addressed the treatment of VNXX arrangements in the context of intercarrier compensation.[62] Under VNXX arrangements, a carrier can assign an NPA/NXX combination to a local service area in which it has no physical presence. This results in a reliance on the existing ILEC network to deliver calls to and from that area and the rating of those calls as though they were local.

What this practice does is to allow those carriers that deploy VNXX arrangements to avoid the costs associated with the origination of calls and enjoy a "local" presence (often for Internet service provider purposes) without incurring the physical costs to do so. Instead, these carriers "export" their costs to rural companies by requiring rural companies to enhance existing trunk groups to carry traffic headed to a VNXX destination. Most often, this traffic flows over the common toll trunk group to the access tandem, just like other interexchange calls. Regardless of the precise routing, costs are borne by the rural company to deliver VNXX traffic to destinations outside its local calling area. That CLECs enjoy a market advantage through the VNXX arrangement is confirmed in WilTel's opening comments. WilTel, an interexchange carrier, requests that the Commission determine that VNXX traffic is not Section 251(b)(5) traffic.[63] We agree. To do otherwise would mean that a carrier providing a conventional long-distance call between Point A and Point B is subject to access charges, while a carrier responsible for a VNXX call between Point A and Point B is not only exempt from access

[62] See, e.g., Opening Comments of the California Small LEC at pp. 2-5; Comments of Pac-West Telecomm, Inc. et al. at p. 52; Comments of XO Communications, Inc. at pp. 12-13; Comments of WilTel Communications, LLC at pp. 24-25; Sprint Comments at p. 17; and CTIA Comments at p. 29.
[63] Comments of WilTel Communications, LLC at p. 24.

charges, but could receive reciprocal compensation for that call.[64] VNXX providers have identified and acted on an arbitrage opportunity premised on the idea that a call's treatment for purposes of intercarrier compensation is driven solely by the NPA/NXX associated with the originating telephone number and the telephone number called. Basing intercarrier compensation on NPA/NXX when it is subject to manipulation is unfair to originating carriers who bear the cost of such traffic as well as to competing interexchange carriers who carry the same traffic yet face different economic consequences than VNXX providers face.

In its comments, XO Communications (XO) claims that VNXX calls are indistinguishable from local calls made to a traditional NXX. XO is wrong. Ducor Telephone Company, a rural company operating in California, illustrates XO's error. In California, a local call is one in which a call travels between exchanges with rating points within twelve miles of one another. Ducor Telephone Company's Ducor exchange is not located within twelve miles of any other exchange; therefore, the only local calls Ducor Telephone Company originates are those that terminate within its own wire center. To the extent extended area service ("EAS") is considered local for intercarrier compensation purposes (which is not conceded), Ducor Telephone Company also has a one-way EAS route with SBC's Porterville exchange; Porterville traffic is routed over an EAS trunk between the Ducor and Porterville end offices. All other traffic is interexchange in nature and routed over toll trunks to an SBC tandem. Accordingly, "local" traffic originated by Ducor Telephone Company is completely distinguishable from VNXX traffic, contrary to XO's assertion.

To the extent the existing regulatory environment continues to distinguish between access and non-access traffic, the Commission should affirmatively classify VNXX traffic as not local and therefore not subject to Section 251(b) treatment. If the Commission is going to continue to

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[64] Id. at p. 25.

allow carriers to have a presence in a local area through the code assignment process resulting in a VNXX arrangement, there ought to be a clear standard established that those carriers are responsible for compensating the originating carrier and not vice versa. The standard would recognize the simple fact that carriers employing VNXX have a choice. On one hand, the VNXX provider can arrange for trunking at its cost to create a presence in the local market that it wants to serve. On the other hand, the VNXX provider can pay the rural company for transporting the traffic on behalf of the carrier using a VNXX arrangement. The VNXX carrier should not be entitled to a free ride on the rural company networks. If VNXX carriers are using rural company networks to enhance the VNXX carriers' service offerings and obtain additional revenues and profits, those carriers should be required to compensate rural companies for the use of rural company networks to generate those revenues and profits.

2. The IntraMTA Rule Imposes Unwarranted Costs on the Rural Companies.

The intraMTA rule which treats calls involving wireless carriers as subject to Section 251(b)(5) treatment when those calls originate and terminate within a major trading area (MTA) also imposes problems for rural companies. The intraMTA rule not only creates disparate compensation obligations between rural carriers and wireless carriers as compared to other carriers, it also shifts network costs from wireless carriers to rural carriers.

When a rural LEC terminates an interLATA or intraLATA wireline call, it receives access charges pursuant to tariffs on file either with a state commission or the FCC. However, much of the interLATA wireless traffic and all of the intraLATA wireless traffic a rural LEC terminates is intraMTA in nature, compensated at reciprocal compensation levels (provided the rural LEC has negotiated a compensation agreement with the originating wireless carrier). The result is that similar traffic is billed at different rates depending on the classification of the originating carrier. Furthermore, wireless carriers off-set their reciprocal compensation obligation to rural carriers by claiming that they are entitled to reciprocal compensation when they terminate rural carrier-originated traffic that terminates within the MTA, even if that traffic is transported to the wireless carrier by an interexchange carrier. The net result is that the intraMTA rule hits rural carriers twice, first by reducing their terminating compensation below otherwise applicable access rates and second by offsetting that terminating compensation by minutes terminating on the wireless carrier network, even when those calls travel hundreds of miles. To remedy this problem, the Commission should eliminate the intraMTA rule so that compensation is determined pursuant to the wireline local calling area as established by the relevant state commission.[65]

The intraMTA rule also imposes network costs on rural carriers, carriers with limited financial resources, to the benefit of wireless carriers, usually those like Cingular, Verizon Wireless and Sprint which have substantial financial resources. If a wireless carrier is entitled to treat the entire MTA as a local calling area and decides not to have direct trunking facilities with a rural company, that traffic arrives at the rural company over common trunking facilities. This again imposes a cost on the rural company of enhancing, most often, the trunks to the access/toll tandem. Wireless carriers, like VNXX carriers, should be required to make a choice. If they want to avoid the cost of direct trunking to the rural company, which they can, then the wireless carriers need to be responsible for the costs imposed on the rural company through sending that traffic over the common trunk group.

[65] See, Comments of GVNW Consulting, Inc. at p. 47.

X. OTHER ISSUES

1. Use of Negotiated Agreements Create Some Problems for Rural LECs.

Many parties advocated that the Commission allow carriers to rely on commercially negotiated agreements as the baseline for intercarrier compensation arrangements.[66] In theory, use of commercially negotiated agreements is a good idea. In practice, it can create substantial problems and expenses for rural companies.

As an illustration, the majority of the rural LECs in Washington and Oregon banded together to attempt to negotiate traffic exchange agreements with wireless carriers operating in those two states. The theory was that by banding together, they presented the opportunity for each wireless carrier to do one set of negotiations, rather than have to negotiate individual agreements with nearly forty separate rural companies. Traffic exchange agreements have been put in place in those states with a few of the major wireless carriers. Thus, the venture was partially successful. However, there are two problems.

The first problem is that the process is incredibly expensive. Negotiations are time consuming. Most rural companies do not have in-house negotiating expertise. Thus, use of outside consultants and attorneys is necessary. In the experiment noted above, negotiations with a few wireless carriers was far more expensive than originally contemplated. It would be prohibitively expensive to expect those rural companies, even banded together, to be able to negotiate traffic exchange agreements with dozens of CLECs. The cost of the carrier-to-carrier negotiations approach overwhelms the ability of the rural companies to actually implement the approach.

The second problem is that some wireless carriers essentially told the wireline carriers to

[66] See, e.g., Comments of the New York State Department of Public Service at p. 5; Comments of Verizon in Response to Further Notice of Proposed Rulemaking at p. 6; and USTA Comments at p. 12.

go take a hike. There does not appear to be any meaningful remedy for such a position. In its T-Mobile decision[67] the Commission suggested that the appropriate remedy available to a wireline carrier if a wireless carrier is not willing to negotiate a traffic exchange agreement is to file a request for arbitration before the appropriate state commission. A major hurdle for this proposed remedy[68] is that it does not appear feasible to have a group negotiation, where a group of rural companies band together to go through a single arbitration with a wireless carrier. It appears from the structure of the statutory arbitration mechanism that each rural company would have to arbitrate with each wireless carrier that has not negotiated an agreement. Again, this is far too expensive a process to be a practical solution. As is the case with other arrangements that work for non-rural companies, the theoretical niceties of carrier-to-carrier commercial negotiations do not translate into practical solutions for rural companies.

Another mechanism has to be allowed. The obvious mechanism is the use of terminating traffic tariffs which would have to stand the scrutiny of state commission review.

2. The Process of "Reinvestiture" Requires Careful Review.

The term "reinvestiture" was coined in the initial comments by the Consumer Advocates. It refers to the process under which SBC is acquiring AT&T and Verizon is acquiring MCI. This consolidation of vertical networks raises significant concerns for rural companies, particularly in the consolidation of Internet backbone access. The ramifications of those re-combinations should be carefully considered by the Commission in evaluating intercarrier compensation reform proposals.

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[67] In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-02, Declaratory Ruling and Report and Order, FCC 05-42 (Released February 24, 2005).

[68] It is not even clear that the proposed remedy is consistent with the language of Sections 251 and 252 in terms of the incumbent seeking arbitration or the rural company, exempt from 251(c) obligations, having the leverage to arbitrate without waiving such exemption.

3. NARUC's "SAM" Proposal Should Not be Adopted.

NARUC has proposed a State Allocation Mechanism (SAM) to be used as part of a universal service distribution process. The SAM methodology is essentially a block grant approach to allocation of federal USF to the states. Under this proposal, the total amount of federal universal service fund support provided to each state each year would be not less than the funds distributed to recipients in that state in 2004 and, ambiguously, "sufficient to ensure that all states have adequate funds to meet the standards prescribed in 254(b)(3) of the Communications Act."[69] Under this proposal, the rural and non-rural mechanisms would be combined and all funds would flow as a block to the states to administer. In theory, under this approach a state could decide that the rural areas served by an RBOC need fifty percent of the support in a particular year, even though under current rules the RBOC would not be entitled to any federal USF support for that year in that state. Obviously, such an allocation to the RBOC would diminish the support received by the rural companies by the same fifty percent.

It is understandable that state commissions have viewed with some concern the fact that non-rural carriers such as Qwest and SBC have not invested in their rural areas to the same extent that rural companies have invested. It is unquestioned that rural companies have better quality of service for their rural areas than Qwest has for its areas. It is unquestioned that rural companies have been better at deploying advanced services, such as broadband access, for their rural areas than Qwest and SBC have for their corresponding rural areas. However, that does not mean that money should be taken from the rural companies in their continued efforts to provide excellent service and given to the non-rural companies as a reward for failure to make investment.

[69] Notice of Written Ex Parte Presentation dated May 18, 2005, Revised NARUC Task Force Proposal Version 7 at p. 11.

From a legal perspective, it is extremely difficult to understand how the SAM mechanism can meet the statutory requirements that support be predictable and that support be sufficient. Further, it appears that the SAM mechanism will increase administrative costs as each state weighs on an annual basis the various “needs” in rural and non-rural areas throughout its state in deciding where federal USF funds will be allocated.

There should be mechanisms available to encourage non-rural companies to invest in their rural areas. However, robbing Peter to pay Paul and increasing the overall administrative costs of the process is not the answer.

CONCLUSION

Thank you for the opportunity to comment. It is important that the Commission address traffic issues first. This includes adopting truth-in-labeling standards with financial consequences for the delivery of improperly labeled traffic. It is important that the Commission address VNXX and intraMTA wireless traffic. It is vitally important that the Commission undertake the work to cost out the intercarrier compensation reform proposals and have a definite idea what such proposals mean for the size of universal service support mechanisms and increases in customer rates. With these steps in place, the Commission can then make an informed decision on how to implement intercarrier compensation reform.

Respectfully submitted this 20th day of July, 2005.

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APPENDIX 1

California Small LECs

Calaveras Telephone Company
Cal-Ore Telephone Co.
Ducor Telephone Company
Global Valley Networks, Inc. (f/k/a Evans Telephone Company)
Happy Valley Telephone Company
Hornitos Telephone Company
Kerman Telephone Co.
Pinnacles Telephone Co.
The Ponderosa Telephone Co.
Sierra Telephone Company, Inc.
The Siskiyou Telephone Company
Volcano Telephone Company
Winterhaven Telephone Company

Colorado Telecommunications Association

Agate Mutual Telephone Co-op Association
Big Sandy Telecom, Inc.
Blanca Telephone Company
Columbine Telecom Company
Delta County Tele-Comm, Inc.
Dubois Telephone Exchange, Inc.
Eastern Slope Rural Telephone Association, Inc.
Farmers Telephone Company, Inc.
Great Plains Communications, Inc.
Haxtun Telephone Company
Nucla-Naturita Telephone Company
Nunn Telephone Company
Peetz Cooperative Telephone Company
PC Telecom
Pine Drive Telephone Company
Plains Cooperative Telephone Association, Inc.
Rico Telephone Company
Roggen Telephone Company
Rye Telephone Company
South Park Telephone Company
Stoneham Cooperative Telephone Corp.
Strasburg Telephone Company
Sunflower Telephone Company
Union Telephone Company
Wiggins Telephone Association
Willard Telephone Company

Oregon Telecommunications Association[70]

Asotin Telephone Company
Beaver Creek Cooperative Telephone Company
Canby Telephone Association
Cascade Utilities, Inc.
Colton Telephone Company
Eagle Telephone System, Inc.
Gervais Telephone Company
Helix Telephone Company
Home Telephone Company
Molalla Communications, Inc.
Monitor Cooperative Telephone Company
Monroe Telephone Company
Mt. Angel Telephone Company
Nehalem Telecommunications, Inc.
North-State Telephone Co.
Oregon-Idaho Utilities, Inc.
Oregon Telephone Corporation
People's Telephone Co.
Pine Telephone System, Inc.
Pioneer Telephone Cooperative
Roome Telecommunications Inc.
St. Paul Cooperative Telephone Association
Scio Mutual Telephone Association
Stayton Cooperative Telephone Company
Trans-Cascades Telephone Company

[70] Verizon Northwest Incorporated, SPRINT Northwest, Citizens Telecommunications of Oregon and Malheur Home Telephone, a Qwest Corporation affiliate, are members of the Oregon Telecommunications Association, but are not participating in these Comments.

Washington Independent Telephone Association

Asotin Telephone Company
Ellensburg Telephone Company
Hat Island Telephone Company
Hood Canal Telephone Co., Inc.
Inland Telephone Company
Kalama Telephone Company
Lewis River Telephone Company, Inc.
Mashell Telecom, Inc.
McDaniel Telephone Co.
Pend Oreille Telephone Company
Pioneer Telephone Company
St. John Co-operative Telephone and Telegraph Company
Tenino Telephone Company
The Toledo Telephone Co., Inc.
Western Wahkiakum County Telephone Company
Whidbey Telephone Company
YCOM Networks, Inc.